

David A. Gebben, Attorney At Law  
1700 Seventh Avenue, Suite 2100  
Seattle, WA 98101  
Ph. (206) 357-8456  
Fax (206) 357-8401

THE HONORABLE CHRISTOPHER M. ALSTON  
Chapter 7  
Hearing Location: Telephonic Hearing  
700 Stewart Street, Room 7206, Seattle, WA 98101  
HEARING DATE/TIME: MAY 22, 2020, 9:30 A.M.  
Response Date: May 15, 2020

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

JAMES TRENTON EYRING and SUZANNE  
MICHELE EYRING,

NO. 19-13579-CMA

TRUSTEE'S MOTION FOR APPROVAL OF HIS  
COMPROMISE WITH THE DEBTORS, AND  
FOR APPROVAL OF HIS PROPOSAL TO  
ABANDON A POTENTIAL CLAIM

## Debtors.

EDMUND J. WOOD, TRUSTEE, the Chapter 7 trustee herein ("trustee"), by and through his legal counsel, David A. Gebben, Attorney At Law, hereby moves this Court, pursuant to 11 U.S.C. §§ 522(b), 541(a) and 554(a), and pursuant to Bankruptcy Rule(s) 2002, 6007, 9013 and 9019, for an order in the form of the *Proposed Order* which is attached hereto, and in support thereof states as follows:

**BACKGROUND:** On or about 6-13-16, which was more than three years prior to the date of the debtors' bankruptcy filing, Suzanne Eyring, a debtor in this case, was involved in an automobile accident. The debtor(s) later hired Reuben J. Ortega and Ortega Law PLLC to pursue claim(s) on their behalf related to that accident, and those claim(s) were then settled for a total of \$40,000 on or about 9-27-19, which was prior to the date of the debtors' bankruptcy filing. At that time, 50% of the settlement was paid to Reuben J. Ortega and Ortega Law PLLC as compensation for the law firm's fees and costs. The remaining \$20,000 is currently on deposit in the attorney trust account at Ortega Law PLLC.

TRUSTEE'S MOTION FOR APPROVAL OF HIS  
COMPROMISE WITH THE DEBTORS, ETC.

-1-

DAVID A. GEBBEN,  
ATTORNEY AT LAW  
1700 SEVENTH AVENUE, SUITE 2100  
SEATTLE, WA 98101  
TELEPHONE: (206) 357-8456  
FACSIMILE: (206) 357-8401

1  
2 On their amended bankruptcy schedules (Docket No. 41), the debtors claimed an exemption in the  
3 amount of \$20,000, under RCW §6.15.010(1)(d)(vi), for their interest in the remaining settlement funds.  
4 The trustee filed a timely objection (Docket No. 42) to the debtors' exemption claim on the basis that any  
5 compensation for pain and suffering or for pecuniary losses would not be covered by the statute. The  
6 trustee later received, and reviewed, some data and information on the debtors' exemption claim. He also  
7 entered into compromise discussions with the debtors on those exemption issues, and he has now entered  
8 into a compromise agreement with the debtors on those issues, as discussed below.

9 The debtors also listed a potential legal malpractice claim against their personal injury attorney  
10 and his firm on their amended schedules (Docket No. 41) related to a possible statute of limitations  
11 deadline that may have been missed by the attorney or his firm. The debtors assigned a value of  
12 "Unknown" to that potential claim and they did not claim any exemption(s) for that potential claim. The  
13 trustee later collected, and reviewed, some data on the potential claim, and the trustee has now decided  
14 that the potential legal malpractice claim is burdensome to the bankruptcy estate and of inconsequential  
value to the bankruptcy estate.

15 The trustee recently listed the debtors' residence, i.e. the real property at: 24957 SE 279<sup>th</sup> Street,  
16 Maple Valley, WA 98038, for sale, and the bankruptcy estate's interest in that property is not affected by  
17 the trustee's compromise agreement with the debtors.

18 MOTION FOR APPROVAL OF TRUSTEE'S STIPULATION WITH THE DEBTORS: In the  
19 interest of resolving any and all pending exemption dispute(s) by and between the trustee and the debtors,  
20 and the status of the potential legal malpractice claim which was listed as an asset on the debtors'  
21 amended schedules, the trustee has now entered into a *Stipulation Between The Debtors And Trustee*  
22 dated 4-13-20, which is on file with the Court. In general, the *Stipulation* provides for the debtors to  
23 receive an allowed exemption in the amount of \$15,000, under RCW §6.15.010(1)(d)(vi), with respect to  
24 the remaining settlement funds in the amount of \$20,000 that are currently being held in the attorney trust  
25 account at Ortega Law PLLC, and the agreement states that the allowed exemption should be disbursed to  
26

TRUSTEE'S MOTION FOR APPROVAL OF HIS  
COMPROMISE WITH THE DEBTORS, ETC.

-2-

DAVID A. GEBBEN,  
ATTORNEY AT LAW  
1700 SEVENTH AVENUE, SUITE 2100  
SEATTLE, WA 98101  
TELEPHONE: (206) 357-8456  
FACSIMILE: (206) 357-8401

1  
2 Suzanne Eyring, and the agreement states that the remaining balance of the settlement funds in the amount  
3 of \$5,000 should be disbursed to the trustee.  
4  
5

6 The trustee submits that this compromise agreement with the debtors is reasonable under the  
7 settlement criteria which are set forth in *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), where the  
8 Ninth Circuit identified the following four factors for the Bankruptcy Court to consider in evaluating a  
9 proposed settlement: (a) the probability of success, (b) the difficulty, if any, for collection, (c) the  
10 complexity of the claims involved and the expense necessary to pursue them, and (d) the best interests of  
11 creditors.  
12  
13

14 In this case, there are some difficult factual issues involved with respect to the debtors' exemption  
15 claim under RCW §6.15.010(1)(d)(vi), including issues related to the pain and suffering portion of the  
16 settlement and issues related to the pecuniary loss portion of the settlement, if any, and it is unclear at this  
17 point whether, and to what extent, the trustee would prevail on those disputes. On the other hand, the  
18 collection of the estate's share of the settlement, once proven, would not be difficult because the  
19 settlement funds are currently being held in a trust account. However, the trustee also has reason to  
20 believe that it would be very time consuming, and expensive, for the estate to resolve the pending  
21 dispute(s) related to the settlement funds through litigation, due to the factual nature of those disputes. In  
22 short, the trustee believes that a quick settlement on those dispute(s) on the terms set forth in the  
23 agreement – which will allow the estate to receive a reasonable portion of the settlement funds – is in the  
24 best interests of creditors. Thus, the trustee submits that his proposed compromise agreement with the  
25 debtors is reasonable should be approved by the Bankruptcy Court, pursuant to Bankruptcy Rule 9019.  
26

27 MOTION TO ABANDON A POTENTIAL LEGAL MALPRACTICE CLAIM: Under 11 U.S.C.  
28 §554(a), the trustee may abandon any assets of the estate which are burdensome to the estate or of  
29 inconsequential value to the estate. See, e.g., *In re Johnston*, 49 F.3d 538 (9th Cir. 1995). In this case, the  
30 trustee has determined that it would be counter-productive to the best interests of the estate for him to take  
31 any further action with respect to the potential legal malpractice claim against the debtors' former  
32

33  
34 TRUSTEE'S MOTION FOR APPROVAL OF HIS  
35 COMPROMISE WITH THE DEBTORS, ETC.

36 -3-

37  
38 DAVID A. GEBBEN,  
39 ATTORNEY AT LAW  
40 1700 SEVENTH AVENUE, SUITE 2100  
41 SEATTLE, WA 98101  
42 TELEPHONE: (206) 357-8456  
43 FACSIMILE: (206) 357-8401

1 personal injury attorney, which was listed as an asset on the debtors' amended schedules and was assigned  
2 a value of "Unknown" on the amended schedules.  
3

4 As explained in the *Declaration of Edmund J. Wood, Trustee* dated 4-15-20, which is being  
5 submitted herewith, the debtors indicated on their amended schedules that they had reason to believe that  
6 their personal injury attorney may have missed a three year statute of limitations deadline for Ms.  
7 Eyring's personal injury claim. However, the trustee's attorney reviewed the pleadings that were filed  
8 with the state court with respect to that matter, and he also contacted the debtors' personal injury attorney  
9 with respect to that matter, and the personal injury attorney stated that he made arrangements for the  
10 summons and complaint in that matter to be served on the opposing parties before the complaint was filed  
11 with the state court and prior to the expiration of the three year statute of limitations time period. The  
12 personal injury attorney also provided trustee's legal counsel with a copy of an affidavit of service and a  
13 copy of a messenger slip to support his explanation on that issue. Consequently, the trustee has reason to  
14 believe that the debtors' personal injury attorney has a defense to the potential legal malpractice claim that  
15 was listed on the amended schedules, and the trustee also has reason to reason that it would not be cost  
16 effective for the bankruptcy estate for the trustee to spend any more time on that potential claim. Thus,  
17 the trustee has concluded that the potential legal malpractice claim is burdensome to the bankruptcy estate  
18 and is of inconsequential value to the bankruptcy estate, and trustee recommends that such claim should  
be abandoned by the trustee at this time.

19 WHEREFORE, the trustee hereby prays for an order of this Court in the form of the *Proposed*  
20 *Order* which is attached hereto.

21 Dated this 17th day of April, 2020.

22 David A. Gebben, Attorney At Law

23 /S/ David A. Gebben  
24 By: David A. Gebben, WSBA #16290  
Attorney for trustee

25  
26 TRUSTEE'S MOTION FOR APPROVAL OF HIS  
COMPROMISE WITH THE DEBTORS, ETC.

-4-

DAVID A. GEBBEN,  
ATTORNEY AT LAW  
1700 SEVENTH AVENUE, SUITE 2100  
SEATTLE, WA 98101  
TELEPHONE: (206) 357-8456  
FACSIMILE: (206) 357-8401